

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 01-455-A
	)	
ZACARIAS MOUSSAOUI	)	

**RESPONSE OF STANDBY COUNSEL TO GOVERNMENT'S MOTION FOR  
PROTECTIVE ORDER REGARDING COCKPIT VOICE RECORDERS**

The government seeks a protective order pursuant to 49 U.S.C. §1154 regarding any Cockpit Voice Recorders (CVR) played at the trial. (Docket #399). The Court directed the United States to immediately provide the Court with a copy of the cockpit voice recordings at issue (as well as any transcripts that have been prepared) for an *in camera* review. (Docket #438). The Court then deferred ruling on the motion until making the determination of relevance. (Docket #438).

It is respectfully submitted that trying this case on evidence hidden from the public by protective order is not the preferred way to proceed. For the reasons argued in the "Response of Standby Counsel to Government's Motion to Use Summary Witness Regarding World Trade Center Attacks" (*see* Response, pp. 2-4), the cockpit voice recorder evidence may not be relevant to the issues in this case, and may otherwise be such highly inflammatory and unfairly prejudicial evidence that it should not be admitted at either the guilt or penalty phase of this case. In any event, once the government explains its theory of relevance, particularly as to the guilt phase, the defense may well agree to stipulate to whatever ultimate fact the government might be attempting to prove, rendering the issue of whether there should be a protective order moot and permitting the case to proceed with all admissible evidence fully available to the public.

## **CONCLUSION**

It is requested that the Court defer any ruling on the admissibility of the cockpit voice recorder and the requested protective order pending the government's proffer of its relevance and an opportunity for the defense to provide an appropriate stipulation.

Respectfully submitted,

STANDBY COUNSEL

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/S/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response of Standby Counsel to Government's Motion for Protective Order Regarding Cockpit Voice Recorders was served upon AUSA Robert A. Spencer, AUSA David Novak, and AUSA Kenneth Karas, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, Virginia 22314 and via facsimile and by placing a copy BY HAND in the box designated for the United States Attorney's Office in the Clerk's Office of the U.S. District Court for the Eastern District of Virginia, and via first class mail to Zacarias Moussaoui, c/o Alexandria Detention Center, 2001 Mill Road, Alexandria, VA 22314 this 12th day of September 2002.

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/S/

Frank W. Dunham, Jr.